



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

Paper No.

FISH & RICHARDSON P.C.  
P.O. BOX 1022  
MINNEAPOLIS, MN 55440-1022

**COPY MAILED**

**JUL 12 2005**

**OFFICE OF PETITIONS**

In re Application of :  
Yamazaki et al. : LETTER REGARDING  
Application No. 10/022,262 : PATENT TERM ADJUSTMENT  
Filed: December 20, 2001 :  
Atty Docket No. 12732-086001 :  
: :  
:

This letter is in response to the "LETTER REGARDING PATENT TERM ADJUSTMENT PURSUANT TO COMMENT 43 OF THE FINAL RULE (09/18/2000)," filed January 31, 2005.

The request for correction of the initial determination of patent term adjustment (PTA) is granted.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment determination at the time of the mailing of the Notice of Allowance was ZERO (0) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On December 10, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 24 days. Applicants state no basis for their request to review the patent term adjustment calculations.

Nonetheless, a review of the record reveals that 2 additional periods of reduction should have been entered in this application. First, the Office did not receive a response to the final rejection mailed October 6, 2003, until applicants filed a request for continued examination (RCE) on February 6, 2004, three months and 31 days later. Pursuant to § 1.704(b), a reduction of 31 days should have been entered for this delay.

Moreover, 37 CFR § 1.704(c)(8) provides that:

submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, is a failure to engage in reasonable efforts to conclude prosecution.

On June 14, 2004, applicants filed a response after non-final Office action. Then, on November 30, 2004, applicants filed an Information Disclosure Statement (IDS). The record does not support a conclusion that the IDS was expressly requested by the examiner. Nor was the IDS accompanied by a § 1.704(d) statement. Accordingly, the PTA should have been reduced pursuant to § 1.704(c)(8). Specifically, the PTA should have been reduced by 168 days, the number of days beginning on the day after the date the initial reply was filed, June 15, 2004, and ending on the date that the supplemental paper was filed, November 30, 2004 for the filing of the IDS.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is ZERO (0) days (including 232 days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in Applicants' favor, the Office will not assess the \$200.00 application fee under 37 CFR 1.705(b). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The Office of Patent Publication has been advised of this decision. The application is, thereby, forwarded to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

*Karin Ferriter  
for*

Karin Ferriter  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

Enclosure: Copy of adjusted PAIR calculation